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LETTER DATED 30 JULY 1968 FROM THE SECRETARY-GENERAL ADDRESSED TO THE
PERMANENT REPRESENTATIVE OF MEXICO TO THE UNITED NATIONS

I have the honour to acknowledge the receipt of your letter of 25 June 1968, in which you state that "the Mission of Mexico has noted with concern the procedures followed during the twenty-second session of the General Assembly with regard to the application of Article 19 of the United Nations Charter and those employed during the twenty-first session to evade the application of that Article". As requested, your letter has been circulated to the General Assembly in document A/7118.

In view of the concern you have expressed, I consider that it is necessary for me to explain fully the reasons for the manner in which the Secretariat has consistently acted in this matter, and why the names of the Dominican Republic and Haiti were omitted in the roll-call votes at the 1582nd meeting of the First Committee, on 10 June 1968, and at the 1671st and 1672nd plenary meetings of the General Assembly, on 12 June 1968.

I may state, at the outset, that I am in full agreement with your remark that "the only right which would be forfeited by a Member of the United Nations which became subject to the application of Article 19 would be the right to vote in the General Assembly, not the right to participate in its debates and proceedings". It is, however, for a Member State which is subject to the application of Article 19 to decide whether it wishes to be present at a meeting where votes by show of hands or by roll-call are anticipated, and where the presence of the Member in the meeting room might result, particularly in the event of a vote by show of hands, in an announcement by the presiding officer that the Member State concerned had no right to vote, or by the matter being otherwise expressly raised from the floor. I believe it is the duty of the Secretariat to draw the attention of a Member State

in arrears to the foregoing possibilities, so that the Member State may decide whether or not it prefers to attend the meeting. This is precisely the procedure followed at the fifth special session of the General Assembly. I understand the reference in your letter to the twenty-first session to be in fact to the fifth special session, which took place between the twenty-first and twenty-second sessions. No problem regarding Article 19 arose during the twenty-first session.

To turn to the procedures followed at the resumed twenty-second session, you will recall that, by letters of 24 and 29 April and 3 and 6 May 1968 (A/7086 and Add.1-3), I reported to the General Assembly on those States which were "in arrears in the payment of their contributions to the United Nations regular budget within the terms of Article 19 of the Charter". My reports were not contested at any time during the resumed twenty-second session by the Member States mentioned therein nor, in fact, by any other Member State. None of the Member States involved requested that the General Assembly permit them to vote under the second sentence of Article 19.

The roll-call votes in question therefore took place in circumstances where the Dominican Republic and Haiti remained in arrears, where the General Assembly had received my reports without any question, where no proposals had been made to refer those reports to the Committee on Contributions, and where no requests had been made under the second sentence of Article 19. Taking these circumstances into account and in the absence of any specific determination by the competent organs of the United Nations, it was the responsibility of the Secretariat officials concerned to discharge their duties in the light of their understanding of the relevant provisions of the Charter. It has always been the understanding of the Secretary-General that the express language of the first sentence of Article 19 of the Charter does not call for a decision of the General Assembly prior to deprivation of vote, and is a provision entirely distinct and separate from Article 18 (2) of the Charter.

I believe that voting under Article 19 is only required in two possible instances, neither of which occurred in the cases under consideration. The first instance would be if my reports indicating that one or more States were in arrears were challenged as factually incorrect. No such challenge was made in the present case. The second instance would be if a Member State in arrears were to request the Assembly to exercise the discretion accorded in the second sentence of

Article 19 to permit that Member State to vote, provided the Assembly is satisfied that failure to pay was due to conditions beyond that Member State's control. In order to arrive at a finding of the nature just indicated, I assume that a necessary prerequisite to action under the second sentence of Article 19 would be a request by a Member State in arrears, accompanied by the submission of such data as to satisfy the Assembly "that the failure to pay is due to conditions beyond the control of the Member". Likewise, only if Assembly action is required in one of these two instances would there be a basis for seeking the advice of the Committee on Contributions under rule 161 of the rules of procedure of the General Assembly.

The foregoing conclusions are based upon legal considerations which are set out in a detailed opinion of the Legal Counsel. A copy of this opinion, in which I concur, is annexed to the present letter.^{1/}

In the light of the foregoing, I consider that the Secretariat is obliged to continue to act in accordance with its understanding of the relevant provisions of the Charter and with the precedents which are cited in the annexed legal opinion until such time as the General Assembly indicates that it does not share that understanding and that different procedures should be followed which may release the Secretariat from this otherwise unavoidable responsibility.

I am having this letter also circulated as a document of the General Assembly.

(Signed) U THANT
Secretary-General

^{1/} For the opinion of the Legal Counsel, see document A/7146, Annex.